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EXHIBITS

Exhibit 1. Brief and Joint Appendix of Appellant-Petitioner, as filed in the lower court. Under Separate Cover
Exhibit 2. Brief as *amicus curiae*, Veterans of Foreign Wars, as filed in the lower court. Under Separate Cover
Exhibit 3. Brief as *amicus curiae*, American Legion, as filed in the lower court. Under Separate Cover

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 145

ORTON T. CAMPBELL,

Petitioner,

vs.

JOHN J. DEVINY, ET AL.,

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

To the Honorable The Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your Petitioner, Orton T. Campbell, most respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit, entered in the above entitled cause on January 24, 1952.

Opinions Below

The opinion of the United States Court of Appeals for the District of Columbia Circuit (R. 52) is reported at 194 F. (2d) 881. The opinion of the District Court (App. 41-45) is reported at 81 F. Supp. 657 (D. C. D. C. 1949). The Dis-

trict Court dismissed Petitioner's suit *solely* on the question of jurisdiction. The opinion was reached without automatic reference to the Court Commissioner of Veterans' Cases in violation of Local Civil Rule 29, *infra*. Petitioner's Brief and Appendix (joint) as filed in the lower court is attached herewith as *Exhibit 1*.

Notwithstanding Petitioner's complaint which distinctly and clearly set forth a genuine issue of material fact, i. e. reallocation and illegal restoration (App. 3-6), that all administrative decisions were in obvious error (App. 12), that all administrative procedures violated regulations (App. 6-10), that all administrative procedures violated the most elementary standards of fairness and reasonableness (App. 6-10); Petitioner's motion to strike and cross motion for summary judgment on question of jurisdiction (App. 33-37), Petitioner's opposing affidavit (App. 39), Petitioner's motion for production of documents (which would have upheld the points complained-of), Respondents' failure to answer complaint, and Respondents' affidavits (App. 16-32) consisting of general, unsupported conclusions (as compared with the factual statements in Petitioner's complaint), the District Court, in violation of Rule 56, Federal Rules of Civil Procedure, issued an opinion replete with the merits of the case as seen *only* by Respondents.

The presiding Judge of the District Court reached said opinion without permitting one scintilla of argument or evidence to be presented pro or con on the merits, the sole and only argument was on the question of jurisdiction as related to the reemployment rights of Federal employees and veteran's preference.

The Court of Appeals opinion affirmed the lower court's dismissal for lack of jurisdiction, notwithstanding the fact that the Court record (*Exhibit 1*) was most succinct and

clear in the above and that the Veterans of Foreign Wars and the American Legion both filed briefs as *amicus curiae,* urging reversal on the question of jurisdiction, ***Exhibits 2 and 3,*** herewith.

Jurisdiction

On April 22, 1952 the time for filing Petition for Writ of Certiorari was extended to and including June 21, 1952 (R. 56). The jurisdiction of the United States Supreme Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925, Chapter 229, 43 Stat. 936, and under 28 U. S. C. Sec. 1254(1).

Questions Presented

1. Whether the Court of Appeals properly affirmed that the District Court for the District of Columbia lacks jurisdiction in enforcing reemployment rights of Federal employees pursuant to Federal Selective Service statute(s) when said statute(s) is silent as to judicial relief?[1]

2. Whether the Court of Appeals properly affirmed that the District Court for the District of Columbia lacks jurisdiction under the provisions of Rule 81(b), Federal Rules of Civil Procedure, in enforcing the mandatory and unconditional reemployment rights when a Federal employee distinctly and clearly alleges a bona fide issue of material fact and distinctly and succinctly alleges that all administrative decisions are in obvious error in the complaint as filed?

3. Whether the Court of Appeals properly agreed with the opinion of the District Court and "upon that basis"

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[1] Hundreds of thousands of Federal employees are being called into military service during the present National emergency with reemployment rights pursuant to Section 9 of the Selective Service Act of 1948, 62 Stat. 614, which provisions are identical and enlarged to Sec. 8 of the Selective Service Act of 1940, 54 Stat. 890, involved in the instant case.

affirmed the judgment, when said opinion was issued in violation of the provisions of Rule 56, Federal Rules of Civil Procedure, and further was replete with opinions on the merits of the case, as seen *only* by Respondents, notwithstanding Petitioner's contradicting affidavits, motion for production of documents (which would have upheld the points complained-of), Respondent's failure to answer complaint, and wherein the sole question argued before the Court was that of jurisdiction, and the presiding Judge reached said decision without permitting one scintilla of evidence or argument to be presented *pro* or *con* on those merits?

4. Whether the Court of Appeals properly affirmed that an amount of $3,000 is a jurisdictional prerequisite in an original mandamus suit in the District Court for the District of Columbia for a Federal employee bringing suit under Rule 81(b), Federal Rules of Civil Procedure, although in this case neither party presented any evidence as to the sum involved, which sum was, in fact, more than said amount?

5. Whether the Court of Appeals properly affirmed that Sections 12 and 14 of the Veteran's Preference Act of 1944 has no application to the reemployment rights of a veteran Federal employee?

6. Whether the Court of Appeals properly affirmed that the District Court can ignore and violate its Local Civil Rule 29 in not automatically referring a veteran's case to the Court Commissioner of Veterans' Cases for a report when said case is fully within purview of Rule 29?

Statutes and Regulations Involved

Section 8, Selective Training and Service Act of 1940, as amended, 54 Stat. 890, 50 U.S.C. App. 308, provides in pertinent part:

> "(b) In the case of any such person who, in order to perform such training and service, has left or leaves

a position, other than a temporary position, in the employ of any employer and who (1) receives such certificate, (2) is still qualified to perform the duties of such position, and (3) makes application for reemployment within [forty] (amended to 'ninety') days after he is relieved from such training and service—

(A) If such a position was in the employ of the United States Government, its Territories or possession, or the District of Columbia, such person shall be restored to such position or to a position of like seniority, status, and pay; * * *

"(c) Any person who is restored to a position in accordance with the provisions of paragraph (A) or (B) of sub-section (b) shall be considered as having been on furlough or leave of absence during his period of training and service in the land or naval forces, shall be so restored without loss of seniority, shall be entitled to participate in insurance or other benefits offered by the employer pursuant to established rules and practices relating to employees on furlough or leave of absence in effect with the employer at the time such person was inducted into such forces, and shall not be discharged from such position without cause within one year after such restoration."

Sections 12 and 14, Veterans' Preference Act of 1944, 5 U.S.C. 861, 863, provides in pertinent part:

"12. *Reduction in Personnel; considerations affecting release.* In any reduction in personnel in any civilian service of any Federal agency, competing employees shall be released in accordance with Civil Service Commission regulations which shall give due effect to tenure of employment, military preference, length of service, and efficiency ratings: *Provided* that the length of time spent in active service of the armed forces of the United States of each employee shall be credited in computing total length of service: *Provided further* that preference employees whose efficiency ratings are 'good' or better shall be retained in preference to all other competing employees and that preference employees whose

efficiency ratings are below 'good' shall be retained in preference to competing non-preference employees who have equal or lower efficiency ratings."

"14. *Discharge, suspension, etc., only for cause; reason in writing; advance notice; personal appearance; findings and recommendations.* No permanent or indefinite preference eligible, who has completed a probationary or trial period employed in the civil service, or in any establishment, agency, bureau, administration, project, or department, hereinbefore referred to shall be discharged, suspended for more than thirty days, furloughed without pay, *reduced in rank* or compensation, or debarred for future appointment except for such cause as will promote the efficiency of the service and for reasons given in writing. * * *" (Emphasis supplied.)

Title 11, Section 315, D. C. Code, 1940 Edition, provides:

"The said District Court of the United States for the District of Columbia may, in its appropriate special terms, issue writs of quo warranto, mandamus, prohibition, scire facias, certiorari, injunction, prohibitory and mandatory, ne exeat, and all other writs known in common law and equity practice that may be necessary to the effective exercise of its jurisdiction."

Rule 81(b), Federal Rules of Civil Procedure, provides:

"The writs of scire facias and mandamus are abolished. Relief heretofore available by mandamus or scire facias may be obtained by appropriate action or by appropriate motion under the practice prescribed in these rules."

Rule 56, Federal Rules of Civil Procedure, provides in pertinent part:

"(c) *Motion and Proceedings Thereon.* * * * The judgment sought shall be rendered forthwith if the pleadings, depositions, and admissions on file, together

with the affidavits, if any, show that there is no genuine issue as to any material fact. * * *

Rule 29, Local Civil Rules of the District Court for the District of Columbia, provides in pertinent part:

> "(a) *Reference to Commissioner.* The following cases when filed shall stand referred to the Commissioner of Veterans' Cases:
>
> "2. Action against an officer of the United States for mandatory or injunctive relief concerning insurance, compensation, retired emergency officers pay, or other benefits due veterans or their dependents."

Summary of Case (6½ years)

Petitioner was employed continuously in a permanent Federal Civil Service position in the Government Printing Office from October 16, 1935 until he enlisted in the military service of the United States on January 15, 1943, at which time he was placed on military furlough from the Planning Division and a position carrying the title of Estimator and Jacket Preparer.

Following his honorable discharge on January 23, 1946, Petitioner returned to duty in the Government Printing Office on April 15, 1946, within the statutory period.

For some time prior to Petitioner being placed on military furlough, he had been performing physical duties in a newly created section of Planning Division, which were not commensurate with job title, job description, or salary. Factually, all technical employees therein carried the title of Estimator and Jacket Preparer, the same as Petitioner, but which was not applicable to their physical duties.

After Petitioner left for military service (on Jan. 15, 1943) a reorganization took place in Planning Division on June 1, 1943, which resulted in the reallocation of all posi-

tions, including that of Petitioner, and proper job titles and salaries, directly commensurate with the physical duties all employees had been performing were awarded to all and *only* those employees present at the time of the reorganization and reallocation. The job titles of Estimator and Jacket Preparer were abolished.

However, due to the fact that all veterans, including Petitioner, were absent in military service, he and they were *entirely omitted from any consideration whatsoever in said reallocation.*

During Petitioner's terminal leave in Texas, he received a letter from Respondent Public Printer dated December 4, 1945, which stated that he would be reemployed in his old job title of Estimator (which had been abolished on June 1, 1943).

Immediately upon his return to civilian duty on April 15, 1946, Petitioner requested proper restoration to a position of like "seniority, status, and pay" in the relative employment framework considering the reallocation, pursuant to Civil Service Regulation published March 25, 1946, Federal Personnel Manual, which provides:

> "*Effect of Reallocation During Veteran's Absence*—If the position held formerly by a returning veteran has been reallocated to a higher level without substantial change in duties and responsibilities, the veteran is entitled to all benefits of the reallocation."

Instead, Petitioner was restored on paper records only to the *beginning and lowest* job title established in the reallocation, and employees having the same title arbitrarily given Petitioner were employed in an entirely different section. Notwithstanding his improper job title, Petitioner was again placed in his former section and again given his former duties but without the benefit of the reallocation.

When Petitioner returned from military service, his former position as reallocated, was occupied by an employee without military preference who had entered the position while Petitioner was absent. Factually, persons without military preference entering the section *years* after Petitioner left, and who had been doing a lower grade of work than Petitioner, but in the same office, were now working in more advanced positions, solely due to being present since the reallocation to reap the benefits, whereas Petitioner, being absent in military service, was entirely omitted from any consideration and upon his return was reduced in rank and status in the relative employment framework.

Petitioner repeatedly requested Respondent Public Printer to make a decision on his claim for proper reemployment, said requests being ignored until he appealed to the Civil Service Commission on March 10, 1947. The Commission notified the Public Printer of the appeal on March 11, 1947, whereupon the Public Printer, together with his agent, Director of Personnel, S. Preston Hipsley, quickly, deliberately, and with malice aforethought prepared a letter *predated* to February 28, 1947 but *mailed* on March 14, 1947 (which envelope was so postmarked), and which letter *pretended* that Petitioner's request for proper reemployment in the reallocation was a request for "promotion", and advised Petitioner that his request was "not worthy of serious consideration"; and a carbon copy of said letter was later presented to the Civil Service Commission, as planned, to make it *appear* that the Government Printing Office had taken action *before* the Commission had inquired of same.

In obvious error, Respondents Civil Service Commissioners, at all administrative levels, notified Petitioner by letters that his reemployment to the position of "Estimator" was proper, when in absolute truth and fact Petitioner was not and could not have been reemployed in a posi-

tion which had been abolished four and one half years before Respondents' final decision dated June 29, 1947.

Never at any time did the Government Printing Office nor the Civil Service Commission rule on the question of reallocation in any documents or proceedings whatsoever.

Having exhausted all administrative recourse, Petitioner then filed suit in the District Court for the District of Columbia on February 19, 1948, pursuant to provisions of Rule 81(b), Federal Rules of Civil Procedure; Selective Training and Service Act of 1940, as amended, 54 Stat. 885; Veterans' Preference Act of 1944, 58 Stat. 390, and in an amended complaint (App. 1-13) distinctly and clearly set forth, among other things, both the bona fide issue of material fact of reallocation and that all administrative decisions were in obvious error.

As related on page 2 of this petition, the District Court for the District of Columbia granted Respondents motion for summary judgment on the question of jurisdiction in most manifest breaches of law and judicial procedures. (See entire record, *Exhibit 1.*)

On January 19, 1949 Petitioner filed an appeal in the Court of Appeals. The Veterans of Foreign Wars filed a brief as *amicus curiae* urging reversal, *Exhibit 2.* The American Legion filed a brief as *amicus curiae* urging reversal, *Exhibit 3.* The case was calendared for oral argument on June 9, 1949.

After date of oral argument was established and all parties notified, Respondent Public Printer, in an obviously premeditated action,[2] to influence the processes of justice by

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[2] The late Hon. T. Alan Goldsborough, Trial Judge in the District Court session on May 18, 1951, commented on Respondent's bad faith as follows:

"But what did you do when he had an appeal in the Court of Appeals to have him put back in office? You discharged him just a few days

prejudicing Petitioner before the Court of Appeals in the instant case, dismissed[3] Petitioner from his civil service position on June 3, 1949, and all Respondents on June 6, 1949, moved the Court of Appeals to dismiss the case for mootness because of said dismissal. On June 10, 1949, the Court of Appeals ordered further proceedings indefinitely stayed (R. 50).

Subsequently, Petitioner's dismissal was set aside by order of the District Court for the District of Columbia on May 28, 1951. (See Findings of Fact and Conclusions of Law at R. 232 in companion petition for certiorari.) Petitioner immediately moved the Appellate Court to restore this cause to the calendar, and an order to that effect issued on June 10, 1951 (R. 51); oral argument being heard on October 12, 1951; and on January 24, 1952, the Court of Appeals issued a decision (R. 52), 194 F. 2(d) 881, wherein the opinion of the District Court (App. 41) granting Re-

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before his appeal could be heard, so as to stop the appeal. That is bad stuff, you know."

The report of the Commissioner of Veterans' Cases for the District Court, filed November 24, 1950, stated:

"The events preceding plaintiff's (Petitioner's) discharge lead me to the conclusion that he was discharged because the Public Printer would not stand for any employee claim, even statutory, no matter how just or inconsequential. When the plaintiff (Petitioner) pursued his remedy for relief into the Federal Court, the rage of the Public Printer apparently started a course of action that included his placing plaintiff (Petitioner) at a desk with no duties for ten months at the expense of the taxpayers. Then when charges were preferred against the plaintiff (Petitioner), there was revealed a 'tempest in a teapot', based on charges, many over two years old, and the rest about one year old each. I cannot see how any fair-minded executive could arrive at any other conclusion from the related facts herein than that the then Public Printer or his successor was attempting to remove from the classified service an employee in contravention to the provisions of the Veterans' Preference Act."

[3] Petitioner has two petitions for writ of certiorari presently before the Supreme Court, the instant case, and the same Respondents on the question of dismissal pursuant to the Veterans' Preference Act of 1944.

spondent's motion for summary judgment on the question of jurisdiction was *affirmed*.

Specification of Errors

The Court of Appeals erred:

1. In affirming that the District Court for the District of Columbia lacks jurisdiction in enforcing the mandatory and unconditional reemployment rights of Federal employees, pursuant to Section 8 of the Selective Training and Service Act of 1940.[4]

2. In affirming that the District Court lacks jurisdiction under the provisions of Rule 81(b), Federal Rules of Civil Procedure, in enforcing the mandatory and unconditional reemployment rights when a Federal employee distinctly alleges a bona fide issue of material fact and clearly alleges that all administrative decisions are in obvious error in the complaint as filed.

3. In agreeing with the opinion of the District Court in violation of the provisions of Rule 56, Federal Rules of Civil Procedure, when said opinion was replete with the merits of the case, as seen only by Respondents, notwithstanding Petitioner's contradictory affidavit, motion for production of documents (which would have upheld the points complained-of), Respondent's failure to answer complaint, and wherein the sole question argued before the court was that of jurisdiction, and the presiding Judge reached said opinion without permitting one scintilla of evidence or argument to be presented *pro* or *con* on the merits reflected throughout the lower court's opinion.

4. In affirming that an amount of $3,000 is a jurisdictional prerequisite in an original mandamus suit in the District Court for the District of Columbia for a Federal employee

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[4] See footnote 1.

bringing suit under Rule 81(b), Federal Rules of Civil Procedure, although in this case neither party presented any evidence as to the sum involved, which sum was, in fact, more than said amount.

5. In affirming that Sections 12 and 14 of the Veterans' Preference Act has no application to the reemployment rights of veteran Federal employees.

6. In affirming that the District Court can ignore and violate its Local Civil Rule 29 in not automatically referring a veteran's case to the Commissioner of Veterans' Cases for the District Court when said case was fully within purview of the Rule.

Reasons for Granting the Writ

1. THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT HAS DECIDED A QUESTION OF GENERAL IMPORTANCE RELATING TO THE APPLICATION OF TWO STATUTES OF THE UNITED STATES, WHICH QUESTION HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT.

This is a petition for writ of certiorari to clarify the jurisdiction of the "Court of Last Resort"[5] for veteran

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[5] The Justice Department is obviously confused as evidenced by the following quotation from their brief filed in the United States Court of Appeals in the present case:

"It is noted that the United States Supreme Court denied certiorari in *Insular Police Commission* v. *Lopez*, 160 F. (2d) 673 (1947), cert. den. 331 U.S. 855. • • • If the right to judicial enforcement of reemployment privileges were as clearly established as appellant (Petitioner) claims, it seems that the Supreme Court would have granted certiorari in that case, and the fact that the United States District Courts (outside the District of Columbia) ordinarily lack mandamus powers, and cognizance of suits under $3,000 in amount, would not necessarily have been fatal. In any event, if the latter two jurisdictional deficiencies (mandamus and $3,000 limitation) were deemed fatal to the action, and the sole basis for the Supreme Court's affirmance (in effect) of the lower court decision, it would seem, nevertheless, that the (Sup.) Court would have granted certiorari, since in a matter of novel impression in a question of such import, the court, undoubtedly, would have felt impelled to specify

Federal employees—the District Court for the District of Columbia—for judicial enforcement of the mandatory and unconditional reemployment rights (See *Hilton* v. *Sullivan*, 768 Sup. Ct. 1020) pursuant to Federal Selective Service Statutes.[6] Said reemployment rights presently stand denied at will by executive whim, caprice, and fiat because the only court available to Federal employees, the District Court for the District of Columbia, notwithstanding Rule 81(b), now stands firmly closed for lack of jurisdiction.

That the question here presented is of general importance and concern to every Federal employee subject to call into military service and subsequent reemployment is most obvious as reflected in the brief as *amicus curiae* of the Veterans of Foreign Wars, attached herewith as *Exhibit 2*, filed in the court below, which stated on page 10:

> "The last word, as always, rests with the judiciary, and we and millions of veterans greatly concerned await your decision believing that the decision and order of the Court below granting Appellee's (Respondent's) motion for summary judgment and denying that of Appellant (Petitioner) should be reversed."

The brief as *amicus curiae* of the American Legion, as authorized by its National Executive Committee, attached herewith as *Exhibit 3*, filed in the court below, stated on page 3:

> "The jurisdictional question involved in this case is of utmost importance to and affects the welfare and statu-

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the limited nature of its affirmance of the decision below, not only to afford the claimant the opportunity of refiling his suit in the District of Columbia where mandamus would lie, but to clarify generally the extent and scope of the remedy provided in the statute. • • •"

[6] Hundreds of thousands of Federal employees are presently being called into military service during the present National emergency, pursuant to Section 9 of the Selective Service Act of 1948, 62 Stat. 614, which provisions are identical and enlarged to the Act of 1940.

> tory rights of a large number of veterans of World War II employed by the Federal Government who left their employment to serve their Country in the Armed Forces, who will be denied the opportunity of judicial enforcement of laws enacted for their benefit by the National Congress if the decision of the lower court is affirmed."

It seems abundantly clear that the Congress when it passed this legislation did not contemplate that the courts would refuse judicial enforcement if administrative authorities failed to carry out its mandate. The view taken by the court below defeats the manifest purpose and design of the statute.

The United States Supreme Court in *Hilton* v. *Sullivan*, 768 Sup. Ct. 1020, said:

> "We have examined the legislative history of the Selective Training and Service Act of 1940 and find nothing whatever which faintly suggests that Congress intended its language to be less mandatory than implied by the words it used. • • •
>
> "We have previously pointed out that Congress in Sec. 8(b)(A) imposed a mandatory and unconditional reemployment obligation upon the Federal Government; in other words, the section guaranteed that a returning veteran would get back his job with the Government."

There can be no doubt but that the intent and command of Congress was to put the returning veteran in exactly the same position he would have been had he not gone to war. The court below sanctioned the District Court's opinion which erroneously stated that the controversy involved the "internal administration" involving "judgment and discretion". The complaint and entire record herewith is succinct and clear as to the administrative caprice exercised in the instant case wherein Petitioner was en-

tirely omitted from consideration in the reallocation of positions in his employing agency.

In *Kephart* v. *U. S.*, 74 Fed. Supp. 578, the Court of Claims in a nearly identical case concerning the rights of a returning veteran said:

> "(1) * * * during his first tour of active military duty from October 1940 to October 1941, the duties formerly performed by him and other P-5 examiners were divided and the more complex cases were assigned to examiners holding positions reallocated to grade P-6 classification. This, of course, left the less complex cases to be handled by the P-5 examiners; thus to restore plaintiff to a P-5 position handling cases of less complexity than those he formerly handled would not constitute a restoration to a position of like seniority, status, and pay. It might be said that to restore him as a P-6 examiner would in a way be restoring him to a higher position than that which he left, * * * but the division of work and the classification of the new positions for some of the work was a natural evolution of the Interstate Commerce Commission and if plaintiff is not permitted to be restored to a position in which he would be engaged on cases of the same relative complexity as when he left, he is being placed at a disadvantage * * *, which would be a demotion in every way except pay. The Acts of Congress were clearly designed to prevent any disadvantage from accruing to a soldier because of his military service. Cf. *Fishgold v. Sullivan Drydock and Repair Corp.*, 66 Sup. Ct. 1105. * * *
>
> "It is true that the Interstate Commerce Commission in their administrative discretion considered plaintiff with the other nine P-5 examiners for 'promotions' to the P-6 position and they did not select plaintiff. * * * The law was clearly intended to preclude restoration to work of a lower classification.
>
> "(2) It is held therefore that restoration of plaintiff to a position of like seniority, status, and pay * * * required his restoration at the grade of P-6 * * *. By

such restoration the plaintiff can be given the rights intended by the various acts designed for the benefit of those who were required to enter the military service."

As noted in the instant case, Petitioner was entirely omitted from any consideration and was restored at the beginning and lowest grade established, and his former position, as reallocated, was held by an employee without military preference who had entered Petitioner's position during his absence in military service.

The second Federal Statute, Sections 12 and 14 of the Veterans' Preference Act of 1944, automatically becomes involved in the reemployment rights of a Federal employee. The court below sanctioned the District Court's decision to the contrary. In the instant case, an employee without military preference held Petitioner's position which necessitated a reduction in personnel action under Section 12, if necessary, to properly restore Petitioner. If a veteran is restored to a lower position than formerly held, the veteran is demoted, *Kephart* v. *U. S.*, supra, and the provisions of Section 14 prohibit such action.

Just as the courts give a wide and liberal construction to the penal provisions of Section 11 [7] of the Selective Service Act of 1940 regarding draft evasion, etc., in order to effect its purpose, so Petitioner contends that the court should not

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[7] Section 12, Selective Service Act of 1948, 62 Stat. 620, is identical and states:

"• • • any other person charged as herein provided with the duty of carrying out any of the provisions of this title, or the rules or regulations made or directions given thereunder, who shall knowingly fail or neglect to perform such duty, • • • or who in any manner shall knowingly fail or neglect or refuse to perform any duty required of him under or in the execution of this title, or rules, or regulations or directions made pursuant to this title, • • • shall, upon conviction in any district court of the United States of competent jurisdiction, be punished by imprisonment • • • or a fine • • • or by both • • •"

give a narrow construction to the remedial provisions of Section 8.

2. THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA HAS RENDERED A DECISION IN CONFLICT WITH DECISIONS OF THE UNITED STATES SUPREME COURT ON THE SAME GENERAL QUESTION OF JURISDICTION.

The action of the court below relies entirely on the silence within Section 8 (b)(A) of the Selective Service Act as to judicial enforcement of the reemployment rights of Federal employees.

The courts will enforce acts granting rights to Federal veteran employees although the statutes creating such rights are silent as to judicial review.

In the case of *Dismuke* v. *U. S.*, 297 U. S. 167, 80 L. Ed. 561, 56 Sup. Ct. 400, the Court stated:

> "But in the absence of compelling language, resort to the courts to assert a right which the statute creates will be deemed to be curtailed only so far as authority to decide is given to the administrative officer."

The Court further held:

> "The power of the administrative officer will not, in the absence of a plain command, be deemed to extend to the denial of a right which the statute creates and to which the claimant upon facts found or admitted by the administrative officer is entitled."

There is no "plain command" in this legislation which would authorize Respondents to deny the right which the statute creates.

The court in the case of *Fischer* v. *Haeberle,* 80 Fed. Sup. 652 said:

> "• • • the Supreme Court has held that the silence of Congress as to the judicial review of orders of an administrative body is not necessarily to be constructed

> as a denial of the power of Federal Courts to grant relief in the exercise of the general jurisdiction which Congress has conferred upon them. The authority for judicial review may be found in the existence of courts and the intent of Congress as deduced from statutes and precedents."

and cited *Stark* v. *Wickard,* 1944, 321 U. S. 288, 64 S. Ct. 559, 88 L. Ed. 733; *Miguel* v. *McCarl, Comptroller General, et al.,* 1934, 201 U. S. 442, 54 S. Ct. 465, 78 L. Ed. 901; and *Dismuke* v. *U. S., supra,* in support thereof.

3. THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA HAS SO FAR SANCTIONED SUCH A DEPARTURE FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEDURE AS TO CALL FOR AN EXERCISE OF THE SUPREME COURT'S POWER OF SUPERVISION.

The court below sanctioned a decision by the District Court replete with the merits of the case, as seen only by Respondents, in passing on summary judgment without permitting one scintilla of evidence or argument *pro* or *con* on said merits. (See entire record herewith.) The complaint (App. 1-13) and opposing affidavit (App. 39) clearly alleged a bona fide issue of material fact and that all administrative decisions were in obvious error.

The complaint avers facts which bring this case squarely within the requirements of the Supreme Court as in the case of *Dismuke* v. *U. S., supra,* as to judicial review of administrative decisions as follows:

> "If he is authorized to determine questions of fact, his decision must be accepted unless he exceeds his authority by making a determination which is arbitrary or capricious or unsupported by evidence; see *Silberschein v. U. S.,* 45 S. Ct. 69; *U. S. v. Williams,* 49 S. Ct. 97; *Meadows v. U. S.,* 50 S. Ct. 279; *Degge v. Hitchcock,* 33 S. Ct. 639; or by failing to follow a procedure which satisfies elementary standards of fairness and reasonableness essential to the due conduct of the proceedings which Congress has authorized." (Citing cases.)

The actions of the court below ignore the fact that the allegations in the complaint must, for the purpose of determining the court's jurisdiction, be accepted as true. *Dollar* v. *Land*, 154 F. (2d) 307, affirmed, 330 U. S. 731, and contradicted a previous holding by the Court of Appeals for the District of Columbia in *Hunter* v. *Mitchell*, 180 F. (2d) 764 which stated:

> "The lower court granted appellee's motion for a summary judgment and we hold that it erred in so doing. There is a genuine issue as to a material fact involved in the case, to wit, whether or not the appellant's down grading was the result of a reduction in force or a general reorganization plan in the Design Branch at the Philadelphia Navy Yard. • • • This principle was reiterated in *Toebelman v. Missouri-Kansas Pipe Line Co.*, 130 F. (2d) 1016, in which we said, 130 F. (2d) at page 1018: 'Upon a motion for summary judgment it is no part of the court's function to decide issues of fact but solely to determine whether there is an issue of fact to be tried. • • • All doubts as to the existence of a genuine issue of material fact must be resolved against the party moving for summary judgment. *Weisser v. Mursam Show Corp.*, 2 Cir., 1942, 127 F. (2d) 344, 145 A.L.R. 467'. • • •
>
> "And again in *Frederick Hart & Co., Inc. v. Recordgraph Corp.*, 3, Cir. 1948, 169 F. (2d) 580, 581, it was said that: 'It is well settled that on motions to dismiss and for summary judgment, affidavits filed in their support may be considered for the purpose of *ascertaining whether an issue of fact is presented, but they cannot be used as a basis for deciding the fact issue'.*"

It is obvious from the record herewith that the present case manifestly violates the accepted and usual course of judicial procedure, particularly as regards to Rule 56, Federal Rules of Civil Procedure.

The lower court further sanctioned the District Court's violation of Rule 81(b), Federal Rules of Civil Procedure because it has long been well settled that the United States District Court for the District of Columbia has original mandamus jurisdiction to compel the performance of a mandatory statutory duty not involving discretion. Title 11, Sections 301 and 315, D.C. Code 1940; *U. S. ex. rel. Kansas City Southern Railway Co.* v. *Interstate Commerce Commission*, 18 F. Supp. 94, affirmed 68 App. D.C. 396, 98 F. (2d) 268, Cert. denied 59 S. Ct. 86, 305 U. S. 625, 83 L. Ed. 400. *Haskins Bros. & Co.* v. *Morganthau*, 66 App. D.C. 178, 85 F. 677, Cert. denied 57 S. Ct. 118, 299 U. S. 588, 81 L. Ed. 433. *Ballou* v. *Kemp*, 68 App. D.C. 7, 92 F. (2d) 556.

The reemployment rights of a veteran Federal employee are mandatory and do not involve discretion. See *Hilton* v. *Sullivan*, 334 U. S. 322.

The lower court also sanctioned the District Court's violation of Local Civil Rule 29 in not automatically referring the case to the Court Commissioner of Veterans' Cases for report. Petitioner was fatally prejudiced, and such failure to refer obviously contributed to the District Court's issuing an opinion manifestly in error factually and legally which breached all concept of judicial etiquette, fairness, and procedure as related, *supra*, and as the entire record upholds.

Conclusion

Wherefore, Petitioner earnestly prays that a writ of certiorari be granted by the Supreme Court of the United States directed to the United States Court of Appeals for the District of Columbia Circuit wherein the decision of the lower court on the six questions presented herewith may be reversed in order that these matters of vast concern to

the great array of veteran Federal employees will be fully clarified in direct relation to the plain, unambiguous language, intent and purpose of the Congress as expressed by pertinent Federal statutes.

Most respectfully submitted,

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Dated June 20th, 1952.

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In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 145

ORTON T. CAMPBELL, *Petitioner*

v.

JOHN J. DEVINY, PUBLIC PRINTER, ET AL.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF FOR RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court for the District of Columbia (R. 41-45) is reported at 81 F. Supp. 657. The opinion of the Court of Appeals for the District of Columbia Circuit (R. 52-53) is reported at 194 F. 2d 881.

JURISDICTION

The judgment of the Court of Appeals was entered on January 24, 1952 (R. 54). On April 22, 1952, the Chief Justice extended the time within

which to file a petition for certiorari to and including June 21, 1952 (R. 56). The petition for certiorari was filed on June 20, 1952. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the courts have jurisdiction over a proceeding in the nature of mandamus to compel petitioner's reemployment in the Government Printing Office at a higher grade where (a) the administrative action sought to be reviewed was discretionary in nature and involved the exercise of judgment, (b) where the procedural rights of the plaintiff were fully preserved, and (c) the only substantial charge was that the administrative action was merely erroneous on the merits.

STATUTE AND INSTRUCTION INVOLVED

1. Section 8 of the Selective Training and Service Act of 1940, 54 Stat. 885, 890, as amended by the Act of December 8, 1944, 58 Stat. 798, 50 U.S.C. App. 308, provides in pertinent part:

* * * * * *

> (b) In the case of any such person who, in order to perform such training and service, has left or leaves a position, other than a temporary position, in the employ of any employer and who (1) receives such certificate, (2) is still qualified to perform the duties of such position, and (3) makes application for reemployment within ninety days after he is

relieved from such training and service or from hospitalization continuing after discharge for a period of not more than one year—

(A) if such position was in the employ of the United States Government, its Territories or possessions, or the District of Columbia, such person shall be restored to such position or to a position of like seniority, status, and pay;

(B) if such position was in the employ of a private employer, such employer shall restore such person to such position or to a position of like seniority, status, and pay unless the employer's circumstances have so changed as to make it impossible or unreasonable to do so;

(C) if such position was in the employ of any State or political subdivision thereof, it is hereby declared to be the sense of the Congress that such person should be restored to such position or to a position of like seniority, status, and pay.

(c) Any person who is restored to a position in accordance with the provisions of paragraph (A) or (B) of subsection (b) shall be considered as having been on furlough or leave of absence during his period of training and service in the land or naval forces, shall be so restored without loss of seniority, shall be entitled to particapte in insurance or other

benefits offered by the employer pursuant to established rules and practices relating to employees on furlough or leave of absence in effect with the employer at the time such person was inducted into such forces, and shall not be discharged from such position without cause within one year after such restoration.

* * * * * *

(e) In case any private employer fails or refuses to comply with the provisions of subsection (b) or subsection (c), the district court of the United States for the district in which such private employer maintains a place of business shall have power, upon the filing of a motion, petition, or other appropriate pleading by the person entitled to the benefits of such provisions, to specifically require such employer to comply with such provisions, and, as an incident thereto, to compensate such person for any loss of wages or benefits suffered by reason of such employer's unlawful action. The court shall order a speedy hearing in any such case and shall advance it on the calendar. Upon application to the United States district attorney or comparable official for the district in which such private employer maintains a place of business, by any person claiming to be entitled to the benefits of such provisions, such United States district attorney or official, if reasonably satisfied that the person so ap-

plying is entitled to such benefits, shall appear and act as attorney for such person in the amicable adjustment of the claim or in the filing of any motion, petition, or other appropriate pleading and the prosecution thereof to specifically require such employer to comply with such provisions: *Provided,* That no fees or court costs shall be taxed against the person so applying for such benefits.

* * * * * *

2. The Federal Personnel Manual R6-16 provided:

> Effect of reallocation during veteran's absence.—If the position held formerly by a returning veteran has been reallocated to a higher level without substantial change in duties and responsibilities, the veteran is entitled to all benefits of the reallocation.

STATEMENT

In October, 1935, petitioner entered the employ of the Government Printing Office as an apprentice (R. 40). After having served in that capacity for five years at $15 a week (R. 18; 40) and as a journeyman for seventeen months (R. 18, 40), he was promoted on March 16, 1942, from Compositor at $1.26 an hour to the position of Estimator in the Planning Division at $3000 per year, comparable to the grade of CAF-7—fifth step (R. 18). Ten months later, on January 15, 1943, petitioner was

given a military furlough from which he returned on April 15, 1946 (R. 2).

While petitioner was serving in the Army a reorganization took place in the Planning Division to which petitioner had been assigned. It was split into four separate divisions (R. 22) with a resulting reallocation of positions. When petitioner returned from the Army he was restored to duty as an Estimator—Jacket Preparer, at a salary of $3640 per annum (Grade CAF-7—seventh step), which took into account the in-grade promotions he would have received had he not been absent.

Petitioner claimed, however, that as the result of the reorganization of the Planning Division his former job as Estimator (CAF-7) had been reallocated as Principal Technical Assistant (CAF-11) without substantial change in duties and responsibilities (R. 42), and that pursuant to Section 8 of Selective Service Act of 1940 (*supra*, pp. 2-5) he was entitled to be reemployed as a Principal Technical Assistant. The Government Printing Office rejected this claim on the ground that the job of Principal Technical Assistant was in no way comparable to the position petitioner had held prior to his entry into military service and that petitioner lacked the necessary qualifications and experience for this job which was essentially of a supervisory nature (R. 42; 21-25).

On March 10, 1947, petitioner appealed to the Veteran's Service Section of the Civil Service Commission. After a careful investigation and

analysis had been made of the positions held and claimed by petitioner, the appeal was denied on June 6, 1947, on the ground that petitioner's job had not been reallocated to a higher level. (R. 25; 29-30, cf. R. 44.) A further appeal filed by petitioner was heard by the Board of Appeals and Review which, after oral argument, decided that petitioner's claim was not justified and that the Government Printing Office had not violated the Selective Service Act of 1940. The findings of the Board were approved by the Civil Service Commission. (R. 25; 30-31.) Petitioner thereupon applied for, and was granted, a personal hearing before the three Civil Service Commissioners. The latter found unanimously that there had been no violation of the Selective Service Act of 1940. Petitioner was notified of this decision on January 29, 1948. (R. 25, 31.)

While the Government Printing Office rejected petitioner's claim that the job he had held at the time of his entry into military service was the equivalent of the new position of Principal Technical Assistant (CAF-11), it gave him a number of promotions which all but gave him the desired rating. On August 11, 1946, *i.e.*, about four months after his return to the Government Printing Office, he was promoted to Senior Technical Assistant (Grade CAF-8—fifth step) at a salary of $4,275;[1] a year later he received an in-grade pro-

[1] On July 1, 1946 he had received the benefit of the 14% increase in compensation provided for by the Act of May 24, 1946, 60 Stat. 216, 5 U.S.C. 672b.

motion to CAF-8—sixth step, at a salary of $4,400; and on January 25, 1948, he was promoted to the special position of Planner, at a salary of $4,900 (R. 53; 18-19). This last advancement brought him within $2 of the annual rate of compensation of a CAF-11.[2]

Petitioner filed his original complaint on February 19, 1948 (Pet. 10), a few weeks after he had been advised of the adverse decision of the Civil Service Commissioners and after he had been given the position of Planner.

The amended complaint filed on July 1, 1948, naming as defendants John J. Deviny, the Public Printer, and the three Civil Service Commissioners (R. 1-13), alleges in effect that the respondent Deviny acted unreasonably, arbitrarily, capriciously and contrary to law by refusing to reallocate his position to the grade of CAF-11 (R. 2-4), and that the Civil Service Commissioners "arbitrarily, capriciously and contrary to law . . . failed and refused to define Plaintiff's restoration rights in such manner as to give full effect to Section 8 of the Selective Training and Service Act." (R. 7).

The request for relief prays in substance that the respondents be required to grant petitioner all the rights to which he is entitled under the Selective Service Act of 1940.

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[2] In January, 1948, the compensation for the grade of CAF-11 was $4,902. Acts of March 4, 1923, 42 Stat. 1488, 1496, June 30, 1945, 59 Stat. 295, 300, 301, May 24, 1946, 60 Stat. 216, 5 U.S.C. 673, 672a, 672b.

The District Court granted respondents' motion for summary judgment, holding (R. 41-45) that the complaint constituted an unconsented suit against the United States, and that it could not be maintained as a proceeding in the nature of mandamus, since the administrative action sought to be reviewed was not of a ministerial nature but required the exercise of judgment and discretion, and, in addition, involved the complex field of personnel management with which the courts are reluctant to interfere. Moreover, the court found that respondents had given scrupulous and sympathetic consideration to petitioner's claim and that extraordinary measures had been taken to protect his rights. The Court of Appeals affirmed *per curiam* on the authority of the opinion of the District Court.[3]

ARGUMENT

1. Petitioner seeks to enforce the reemployment rights[4] claimed by him in an action in the nature

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[3] On June 3, 1949, petitioner was separated for cause from the Government Printing Office. This discharge is the subject of *Campbell* v. *Devine et al.*, No. 146, October Term 1952. It is submitted that the instant case is moot unless this Court holds that the discharge was improper (cf. R. 50).

[4] Pursuant to Section 8(b)(A), (c) (*supra*, pp. 2-4), the discharged veteran is to be restored to the position he left or to one of like seniority, status, and pay. If his position has been reallocated to a higher level without a substantial change in duties and responsibilities, the veteran is to be reinstated in that higher grade. Federal Personnel Manual R6-16, *supra*, p. 5.

of mandamus. The courts below properly held that this case does not come within the narrow confines of the mandamus jurisdiction, a remedy of a limited scope, *Wilbur* v. *United States,* 281 U.S. 206, 218.

a. Mandamus, while the appropriate vehicle to compel the performance of a ministerial duty, is not available to control official action which involves the exercise of discretion or judgment. *Adams* v. *Nagle,* 303 U.S. 532, 542; *Wilbur* v. *United States,* 281 U.S. 206, 218; *Knight* v. *Lane,* 228 U.S. 6, 13; *Ness* v. *Fisher,* 223 U.S. 682, 691-692; *Decatur* v. *Paulding,* 14 Pet. 497, 515; cf. *Marbury* v. *Madison,* 1 Cranch 137, 165-167. Both courts below correctly applied this rule, finding that the administrative action which petitioner is here attacking involves the exercise of discretion and judgment (R. 43, 53).

It is clear that these findings are correct. Concededly the veteran's reemployment rights are absolute and mandatory (*Hilton* v. *Sullivan,* 334 U.S. 323, 329). But determination of the grade in which the returned veteran has to be reemployed in case of a reallocation of position is by no means a mechanical, automatic task. It requires a comparison of the duties the employee performed prior to his entry into military service with the position to which he claims to be entitled and the determination whether the latter involves substantially the same duties and responsibilities. The evaluation of such questions of personnel management re-

quires specialized knowledge and experience.[5] Moreover, it covers an area in which the courts are especially hesitant to substitute their judgments for that of the defendant official, especially in a case like this where there has been substantial compliance with petitioner's request to be reemployed at the grade of CAF-11. *Keim* v. *United States,* 177 U.S. 290; *Eberlein* v. *United States,* 257 U.S. 82; *United States* v. *Mitchell,* 89 F. 2d 805 (C.A.D.C.).

b. Nor should the administrative determination be reviewed on the ground that it was arbitrary,

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[5] The statutory prerequisites for the position of CAF-11 are:

> Grade eleven, in this service, which may be referred to as the assistant chief administrative grade, shall include all classes of positions the duties of which are to perform the most difficult and responsible office work along specialized and technical lines, requiring extended training and experience, the exercise of independent judgment, and the assumption of responsibility for results, or to supervise the general business operations of an executive department, or to supervise a large and important office organization engaged in work involving extended training and considerable experience on the part of the employees. [Classification Act of 1923, Sec. 13, 42 Stat. 1488, 1496, 5 U.S.C. 673.]

This position obviously envisages a mature craftsman whose judgment and experience are based on many years of practical work in his field. A person 2½ years out of his apprenticeship would not appear to measure up to these exacting qualifications. And petitioner's own affidavit stating that he supervised the work of two employees (R. 39) indicates that he did not "supervise a large and important office organization engaged in work involving extended training and considerable experience on the part of the employees."

capricious and contrary to law (*supra*, p. 8). Both courts below found that (R. 44, 53):

> extraordinary measures were pursued to insure the protection and security of plaintiff's rights. To state that the claim was given most exhaustive treatment is hardly descriptive of the steps taken to guarantee a full, fair and sympathetic consideration of every aspect of his case.

Petitioner seeks to attack these findings on the ground that it constituted error to decide contested issues of fact on motion for summary judgment. A careful reading of the complicated complaint, however, fails to disclose a single factual allegation to support the charges of capriciousness, arbitrariness and illegality, which, as is well established, are nothing but legal conclusions. *Silberschein* v. *United States*, 266 U.S. 221, 225. Reduced to its essence, the complaint merely charges an erroneous application of Section 8 by the respondents. But mandamus is not a substitute for the writ of error. *Wilbur* v. *United States*, 281 U.S. 206, 220; *Adams* v. *Nagle*, 303 U.S. 532, 543; and see *Larson* v. *Domestic and Foreign Commerce Corp.*, 337 U.S. 682, 695.

2. Brief mention may be made of the other contentions set forth in the petition.

a. The first question raised by the petitioner and the supporting argument (Pet. 3, 13-18) are not

altogether clear. They probably are confined to a discussion of the scope of jurisdiction in mandamus cases. There is, however, some indication that petitioner seeks to make an additional argument to the effect that by the very grant of veteran reemployment rights to federal employees Congress waived the sovereign immunity of the United States so that these rights might be enforced under judicial supervision (cf. Pet. 15).[6]

The court below properly rejected this contention, following the interpretation of Section 8 in *Insular Police Commission* v. *Lopez*, 160 F. 2d 673 (C.A. 1), certiorari denied, 331 U.S. 855. The very fact that Congress expressly provided for a judicial remedy for veterans in private employment (Section 8(a)), but failed to make analogous provisions for government employees, indicates that it envisaged the enforcement of these reemployment rights solely through administrative remedies. The circumstance that a statute creates a right against the United States does not mean that Congress intends that it be judicially enforced. *Lynch* v. *United States*, 292 U.S. 571, 582; *Tutun* v. *United States*, 270 U.S. 568, 576; *United States* v. *Babcock*, 250 U.S. 328. The waiver of statutory immunity requires a *specific* consent (*Nassau Smelting and Refining Works* v. *United States*, 266 U.S. 101, 106; *United States* v. *Shaw*, 309 U.S.

[6] The Administrative Procedure Act is inapplicable by its own terms. Sec. 2(a), 60 Stat. 237, 5 U.S.C. 1001(a).

495, 503), and this requirement of specificity and directness becomes even more essential in the field of federal personnel administration. *Keim* v. *United States,* 177 U.S. 290, 296; *Eberlein* v. *United States,* 257 U.S. 82.

b. Petitioner also claims that his reinstatement at allegedly too low a grade not only violated Section 8, but also constituted in effect a reduction in rank or compensation within the meaning of Section 14 of the Veterans' Preference Act of 1944 (58 Stat. 387, 390, 5 U.S.C. 863) and that there had been no compliance with the procedural requirements of Section 14. The courts below properly held that the Veterans' Preference Act is not applicable to petitioner's claim (R. 45, 53).

The Veterans' Preference Act of 1944 seeks to protect the veteran from a "reduction in rank or compensation." We submit that the reinstatement of a returned veteran at a rank or compensation not lower than the one he held at the time he entered the military service does not constitute a reduction in rank or compensation within the purview of the Veterans' Preference Act, even if it might have been erroneous.

Moreover, petitioner seeks to apply the Veterans' Preference Act as a sanction of the reemployment benefits under Section 8 of the Selective Service Act, so that a determination under the latter Act could be attacked as a violation of the former. In *Hilton* v. *Sullivan,* 334 U.S. 323, this

Court had to contend with the baffling complexities arising from an analogous attempt to construe the Veterans' Preference Act as affecting the reemployment benefits under Section 8. This Court held there that the 1944 Act did not interfere with the rights created by the 1940 Act. We submit that the result should be the same in the instant case.[7]

Finally, reference is made to the argument in our Brief in Opposition in the companion case, No. 146, October Term, 1952, p. 11, to the effect that petitioner as an employee of the legislative branch of the Government may not be entitled to the benefits of the Veterans' Preference Act.

c. The petition finally raises two procedural questions, whether the courts below erred in holding that the $3,000 jurisdictional amount applied to an original action in the nature of mandamus and whether under Rule 29 of the Local Civil Rules of the United States District Court for the District of Columbia the motion for summary judgment first should have been referred to the Commissioner of Veterans' Cases.

(i) The courts below properly held that they lacked jurisdiction to entertain the complaint since the administrative action sought to be reviewed involved the exercise of discretion and judgment. In those circumstances there is no need to reach the

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[7] This also disposes of petitioner's complaint of the violation of his rights under Section 12 of the Veterans' Preference Act, 58 Stat. 390, 5 U.S.C. 861.

question whether the complaint was also defective for lack of the jurisdictional amount.

(ii) We submit that the alleged violation of a local court rule does not usually call for the exercise of the supervisory powers of this Court, especially where there has been no showing of discrimination or resulting prejudice. Moreover, since it is the function of a motion for summary judgment to determine whether there are any genuine issues of fact, a reference prior to a decision on that motion would have caused needless work and duplication. It might even have constituted a violation of Rule 53(b), Federal Rules of Civil Procedure, directing that a reference shall be the exception and not the rule, and prohibiting in particular the general reference of specific types of cases. *Los Angeles Brush Corp.* v. *James,* 272 U.S. 701; *United States* v. *Kirkpatrick,* 186 F. 2d 393, 397-398 (C.A. 3).

CONCLUSION

The decision below is correct and does not warrant further review. It is respectfully submitted, therefore, that the petition for a writ of certiorari be denied.

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JULY, 1952

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 146

ORTON T. CAMPBELL,

Petitioner,

vs.

JOHN J. DEVINY, ET AL.,

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

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Boise, Idaho,
pro se.

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EXHIBITS

Exhibit 1. Brief as *amicus curiae*, Veterans of Foreign Wars, as filed in the lower court. Under Separate Cover
Exhibit 2. Brief of Appellee-Petitioner, as filed in the lower court. Under Separate Cover

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 146

ORTON T. CAMPBELL,

Petitioner,

vs.

JOHN J. DEVINY, ET AL.,

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

To the Honorable The Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your Petitioner, Orton T. Campbell, most respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit, entered in the above entitled cause on January 24, 1952.

Opinions Below

The opinion of the United States Court of Appeals for the District of Columbia Circuit (R. 243) is reported at 194 F. 2(d) 876. The opinion of the District Court is unreported, but the Findings of Fact, Conclusions of Law, and

Final Judgment are set forth in their entirety at J. App. 232-236.

The sole questions presented to both lower courts were whether the alleged reasons assigned for Petitioner's dismissal from his Civil Service position were in accordance with Section 14 of the Veterans' Preference Act, *infra;* whether the applicable administrative regulations were followed; whether those regulations were reasonably adequate; and whether it was prejudicial error for a Judge of the District Court, other than the Trial Judge, to refer this case prior to trial to the Court Commissioner of Veterans' Cases for report pursuant to Local Civil Rule 29, *infra. The truth or falsity of the alleged reasons assigned for Petitioner's dismissal was not at issue at any time.*

After lengthy hearings and presentation of evidence, the District Court Commissioner of Veterans' Cases submitted a detailed report (J. App. 71-127) to the District Court which stated (J. App.) at page 100:

> "• • • I cannot see how any fair-minded executive could arrive at any other conclusion from the related facts herein than that the then Public Printer or his successor was attempting to remove from the classified service an employee in contravention to the provisions of the Veterans' Preference Act.
>
> "Here is the Chief Executive of an important executive agency blatantly attempting to rid himself of a preference employee."

and (J. App.) at page 102:

> "• • • The Commission, as a friend of the veteran, just simply let him down in this case as part and parcel of the attempt to avoid the mandate of the Section 14 and the regulations thereunder."

and further at page 112 (J. App.):

> "Plaintiff (Petitioner) has demanded and been refused the particulars in detail lacking in several of the preferred charges."

The District Court, after additional lengthy argument and presentation of evidence, set aside Petitioner's dismissal and directed his reinstatement by (J. App. 232-236):

> "*Findings of Fact* • • • At no time was Plaintiff (Petitioner) advised in writing of all reasons specifically and in detail of the charges preferred against him sufficient to inform him with reasonable certainty and precision of the cause for his removal."
>
> "*Conclusions of Law* • • • That the charges filed against Plaintiff (Petitioner) by the Public Printer on April 29, 1949, upon which his wrongful discharge was based, do not state 'all reasons specifically and in detail for any such proposed action' as required by Section 14 of the Veterans' Preference Act of June 27, 1944 (Title 5 U. S. C. Para. 861), and therefore, the findings of the Defendants (Respondents) sustaining such charges are null and void and of no legal effect and should be set aside by order of this Court."

The Court of Appeals reversed the lower court in a majority opinion stating at (R. 245) 94 F. 2(d) 877:

> "• • • His (Petitioner's) argument is, in effect, that, since all reasons for which he was discharged had to be stated in detail, failure of one asserted reason to meet that test invalidated the whole result. It seems to us that *the statute would be absurd if it had such a meaning.*" (Emphasis supplied.)

in obvious contravention to the applicable Federal statute requiring *advance written notice*, stating "*any* and *all* reasons, *specifically and in detail*, for any such *proposed* action."

Furthermore, the Court of Appeals failed to rule on a bitterly contested question of law, that of reference of the case prior to trial to the Court Commissioner of Veterans' Cases for report pursuant to Local Civil Rule 29, *infra*.

Jurisdiction

On April 22, 1952 the time for filing Petition for Writ of Certiorari was extended to and including June 21, 1952 (R. 252). The Jurisdiction of the United States Supreme Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, Chapter 229, 43 Stat. 936 and under 28 U. S. C. Section 1254 (1).

Questions Presented

1. When Petitioner, as a Federal employee entitled to the provisions of Section 14 of the Veterans' Preference Act requiring advance written notice "stating *any* and *all* reasons, *specifically* and *in detail*" for the proposed discharge, was dismissed for the *cumulative* effect of ten charges of alleged misconduct, was not such dismissal invalidated when six of the charges were so vague and gossamer in nature in the original notice as to make it impossible for Petitioner to defend himself other than by a general denial?

2. In a case tried without a jury, where the trial court after examining the Court Commissioner's detailed report, the documentary evidence and the admissions of the Defendants-Respondents, found as a fact that "at no time was Plaintiff-Petitioner advised in writing of all reasons specifically and in detail of the charges preferred against him sufficient to inform him with reasonable certainty and precision of the cause for his removal", and within the meaning of Rule 52 (a), Federal Rules of Civil Procedure, providing that such findings of fact shall not be set aside unless clearly erroneous, did not the Court of Appeals re-

verse the District Court in contravention to Section 14 of the Veterans' Preference Act by stating "the statute would be absurd if it had such a meaning?

3. In such a manifest departure from the accepted and usual course of judicial procedure, was the Court of Appeals justified in rendering an opinion on the merits of the charges as stated solely by Appellants-Respondents when Appellee-Petitioner had raised only a question of law in all proceedings?

4. The Court of Appeals having failed to rule on an important question of law bitterly contested by all parties, was it or was it not prejudicial error for one of the judges of the District Court other than the Trial Judge to refer this case prior to trial to the Court Commissioner of Veterans' Cases for a report pursuant to Local Civil Rule 29, *infra*?

5. Whether Respondent's ten alleged reasons for dismissing Petitioner can be accepted by the Court as bona fide and presented in good faith, when, in fact, documentary evidence[1] in the court record below clearly shows by

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[1] Excerpts, Official Transcript of meeting held Nov. 4, 1947 in the office of the Public Printer, *19 months before* Petitioner's dismissal on June 3, 1949.

Executive Officer Herrell: • • • what are the specific grounds on which we can fire him? • • •

Director of Personnel Hipsley: You have every right to direct him to be examined by a psychiatrist • • • then if he is determined to be abnormal our problem is solved • • •

Planning Manager Cole: An examination will convince the psychiatrist that he has an I.Q. of a college professor and the mental ability to handle the Washington Loan and Trust.

Herrell: • • • There is a question in my mind as to whether we could demand, as a matter of right, that he be examined • • •

Comptroller Cristofane: • • • I believe we would be in a better position if we abandoned the idea. • • •

Deputy Public Printer Deviny: When he is interviewed by the Public Printer the Public Printer could demand his resignation. • • • Frequently that works very successfully.

Herrell: But he would take the case to his attorney.

Respondent's own admissions that they were at a loss for legitimate grounds for Petitioner's dismissal and were forced to find same at any cost in order that Petitioner's appeal for his statutory reemployment rights in Case No. 10147 before the Court of Appeals be dismissed for mootness, and did they not thereby place themselves in contempt of court? (Petitioner presently has two petitions for writ of certiorari before the Supreme Court.)

Christofane: • • • The insubordination charge, of course, is pretty far back.

Herrell: You could get that in the morning. You go in there and tell him to do something and you'll get it right now. • • • If as John (Deviny) says, we think we can support the charge of insubordination, all right; • • •

Hipsley: I wouldn't be disturbed whether the board establishes the facts *before or after,* but I do think in this case we have 9 changes out of 10 of losing, on the basis of the facts as I see them. • • • If the man didn't get the papers in an unauthorized way and we could determine it *before we jumped off the board, we would certainly be in a far better position than making the charges and finding out about them afterwards.*" (Emphasis supplied.)

The Late Hon. T. Alan Goldsborough, Trial Judge in the District Court session on May 18, 1951, commented on Respondent's bad faith as follows:

"But what did you do when he had an appeal in the Court of Appeals to have him put back in office? You discharged him just a few days before his appeal could be heard, so as to stop the appeal. That is bad stuff, you know."

The Report of the Commissioner of Veterans' Cases for the District Court filed November 24, 1950 stated:

"The events preceding plaintiff's (Petitioner's) discharge lead me to the conclusion that *he was discharged because the Public Printer would not stand for any employee claim,* even statutory, no matter how just or inconsequential. When the plaintiff (Petitioner) pursued his remedy for relief into the Federal Court, the rage of the Public Printer apparently started a course of action that included his placing plaintiff (Petitioner) at a desk with no duties for ten months at the expense of the taxpayers. Then when charges were preferred against the plaintiff (Petitioner), there was revealed a 'tempest in a teapot', based on charges, many over two years old, and the rest about one year old each. I cannot see how any fair-minded executive could arrive at any other conclusion from the related facts herein than that the then Public Printer or his successor, was attempting to remove from the classified service an employee in contravention to the provisions of the Veterans' Preference Act." (Emphasis supplied.)

Statutes and Regulations Involved

Section 14 of the Veterans' Preference Act of 1944, as amended, 65 Stat. 39, 61 Stat. 723, 5 U. S. C. A. 863, provides the mandatory and limiting procedural pattern by which a veteran Federal employee may be discharged, pertinent part as follows:

> "No permanent or indefinite preference eligible, * * * shall be discharged * * * and for reasons given in writing, and * * * shall have at least thirty days' *advance written notice* (except where there is reasonable cause to believe the employee to be guilty of a crime from which a sentence of imprisonment can be imposed), stating *any* and *all* reasons, *specifically* and *in detail,* for any such *proposed* action; * * * Provided, that such preference eligible shall have the right to make a personal appearance, * * * in accordance with such reasonable rules as may be issued by the Civil Service Commission; * * *" (Emphasis supplied.)

Rule 52 (a), Federal Rules of Civil Procedure, provides in pertinent part:

> "* * * Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. * * *"

Rule 29, Local Civil Rules of the District Court for the District of Columbia, provides in pertinent part:

> "(a) *Reference to Commissioner.* The following cases when filed shall stand referred to the Commissioner of Veterans' Cases:
>
> "2. Action against an officer of the United States for mandatory or injunctive relief concerning insurance, compensation, retired emergency officers pay, or other benefits due veterans or their dependents."

Summary of Case (3 Years)

Inasmuch as the Respondents have throughout the record clouded and distorted the simple issue of violation of statute by attempting to argue the merits of the charges, and as Petitioner presently has two petitions for certiorari before this Court, a small amount of background must be related in order to give proper perspective to the instant case.

The report of the District Court Commissioner (J. App. 80-81) shows that Petitioner was employed continuously in the Government Printing Office from October 16, 1935 until January 15, 1943 when he was placed on military furlough until his return to civilian duty on April 15, 1946 following his honorable discharge. During his employment, Petitioner was appointed to many official positions of honor and trust, viz., Editor-in-Chief of the AGPO; Editor-in-Chief of the Recreation News; Editor-in-Chief of official Five-Year Commemoration Annual; placed second in a National contest for printing designs; designed and produced the official diploma; designed and produced the portfolio; designed and produced the bronze plaque "This is a Printing Office" now mounted in the lobby of Building No. 3; was appointed to Planning Division and was responsible for War Bond promotion work; received a citation from Henry Morgenthau, Jr., Secretary of the Treasury of the United States, "For Distinguished Services" in behalf of the National War Savings Program; received a letter of commendation for production work from Director of Radio and Press of War Savings Staff, et cetera.

When Petitioner volunteered for military service in 1942, the Superintendent of Planning of the Government Printing Office wrote a letter of commendation (J. App. 157) as follows:

> "• • • His duties on this work required a clear, quick-acting mind, above average intelligence, and a

pleasing and cooperative personality. He has also been required, due to unexpected demands, to work exceptionally long hours. In all of these duties, I have found Mr. Campbell thoroughly capable.

"• • • His performance has been outstanding in this Division, • • •"

Respondent's predecessor Public Printer wrote in 1942 (J. App. 158) pursuant to Petitioner's entering military service:

"• • • he was promoted to the Planning Division where he is now carried as an estimator. This position requires a high degree of skill, industry and loyalty to the Office.

"We have found Mr. Campbell to be an intelligent, industrious, interested employee. • • •"

After Petitioner's return from overseas duty, Morris H. Reeves, Superintendent of Composition of the Government Printing Office, wrote on December 12, 1945 (J. App. 159):

"• • • Mr. Campbell was assigned to the Planning Division at the outbreak of the War. He worked there until he was called into military service, demonstrating a high degree of adaptability to new phases of the work, so much so that he was selected to be one of the few who represented the Office in the field in connection with the purchase of printing from private firms.

"He is earnest, conscientious, and gets along well with his supervisors and co-workers. I have found him ready at all times to serve beyond his regular tour of duty. • • •"

Emmit I. Hill, Director of Commercial Planning of the Government Printing Office, wrote on July 12, 1946:

"• • • Mr. Campbell was one of the first employees of the Office engaged in the commercial procurement of printing. It is believed that had his office experience not been interrupted by military service,

he would have been used in a grade of work even higher than CAF-9 which is now being asked for him. In industry and initiative he is not surpassed by any employee or official of this Division.

"• • • with slightly more experience will be qualified to fill the vacancy left by Mr. Panneton's promotion to Assistant Director of this Division. It may be noted here that when Mr. Campbell went into the Army Air Forces he and Mr. Panneton were working side by side on an identical class of work."

Upon Petitioner's return to the Government Printing Office on April 15, 1946 he learned that his former position had been reallocated, that he had been omitted from any consideration during his military service, and was being reemployed at the beginning and lowest position established, without regard to his reemployment rights. After exhausting all administrative recourse to no avail, Petitioner brought suit in the District Court for the District of Columbia for his proper mandatory reemployment. The suit was dismissed for lack of jurisdiction, and the decision, being affirmed by the Court of Appeals, is presently before this Court on another petition for certiorari, No. 10147.

Immediately after Petitioner filed suit for proper reemployment, Respondent Public Printer had all of Petitioner's duties and responsibilities taken away, leaving him idle for a period of ten months (J. App. 80, Report of Court Commissioner.). Herbert J. Jacobi, member of the District of Columbia Bar and past National Vice-Commander of the American Legion, testified under oath (J. App. 83-84) that Respondent Public Printer stated, "*He* (Public Printer) *would fire Mr. Campbell* and see that he would never get another job with any reputable or union printer", and that, "He (Public Printer) *had had the telephone tapped* and was listening in on conversation between Mr. Campbell and another employee of the Government Printing Office", and that the Public Printer "*raved,*

pounded his fist on the desk and cursed heavily". (Emphasis supplied.)

Many meetings were held by Respondent Public Printer during the period from April 15, 1946 until April 29, 1949 on the subject of *how to dismiss Petitioner,* see Footnote 1, an obvious retaliation to his filing suit for his reemployment rights in Case No. 10147.

Accordingly, when Respondent Public Printer learned that the date of oral argument in case No. 10147 was to be advanced on the Court calendar, he had his agent hand Petitioner a written notice dated April 29, 1949 proposing his dismissal (J. App. 7-9) on ten charges of alleged misconduct, six of which were manifestly enigmatic and vague.[2]

By registered letter dated May 12, 1949 (J. App. 11-13), Petitioner requested the specificity lacking in the charges, such as the naming of the mysteriously termed "official papers" allegedly removed or caused to be removed, the naming of his alleged accomplice(s), the nature of the "false and unfounded" statements allegedly made, that he be given or at least shown a copy of the American Legion letter referred to, and details concerning many other general innuendoes contained in Charges 1, 2, 3, 5, 6, and 7 in order that he might defend himself therefrom. (See also Admissions of Public Printer, J. App. 54-65.)

On June 3, 1949 Petitioner was *handed* a letter of dismissal[3] (J. App. 14) which stated, in an *admission* of lack

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[2] The need for specificity is particularly emphasized here in that only Charge 1 allegedly occurred recently, the other nine charges allegedly occurring from *6 months to 2 years* prior to April 29, 1949 when they were preferred: i.e. Charge 2, 20 months; Charge 3, 14 months; Charge 4, 8 months; Charge 5, 21 months; Charge 6, 20 months; Charge 7, 15 months; Charge 8, 14 months; Charge 9, 14 months; Charge 10, 6 months.

[3] In an obvious effort to influence the processes of justice, Respondent Public Printer had his agent, H. H. Wright, hand Petitioner the final dismissal letter on Friday, June 3, 1949, and then on Monday, June 6, 1949 filed a photostatic copy of the *original signed* letter (which could only have been *premediatedly* photostated *before* same was *handed* to

of specificity, that "nothing would be accomplished" by compliance with Petitioner's request that the charges be made specific, and sustained all ten alleged charges.

Petitioner then exhausted all administrative recourse, constantly raising the legal question of the insufficiency of six of the charges, and attempted to obtain the basic concepts of a fair hearing[4] before the Civil Service Commission but was unsuccessful. (See Admissions of Civil Service Commissioners J. App. 49-54; also, Court Commissioner's Report J. App. 102.) Respondents Civil Service Commissioners wrote a final letter (J. App. 49) dated March 17, 1950 "sustaining the action of the Government Printing Office".

Petitioner then filed suit in the District Court for the District of Columbia on March 10, 1950. The complaint was confined *solely* to Respondent's failure to follow the Statutory requirements.

On May 28, 1951 the District Court set aside Petitioner's dismissal and directed his reinstatement forthwith (J. App. 232-236).

On May 29, 1951 Respondents moved the Court of Appeals for an indefinite stay pending appeal on the premise

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Petitioner) (J. App. 14-15) with the Court of Appeals in a motion to dismiss case No. 10147 for mootness *three days* before the date of oral argument. The Court however, only indefinitely stayed proceedings. The late Hon. T. Alan Goldsborough, Trial Judge in the District Court session on May 18, 1951 commented on Respondent's bad faith as follows:

"But what did you do when he had an appeal in the Court of Appeals to have him put back in office? You discharged him just a few days before his appeal could be heard, so as to stop the appeal. That is bad stuff, you know."

[4] The Supreme Court in Morgan v. United States, 304 U. S. 1, said at page 22:

"The maintainance of proper standards on the part of administrative agencies in the performance of their *quasi-judicial* functions is of the highest importance • • • they must accredit themselves by acting in accordance with the cherished judicial tradition embodying the basic concepts of fair play." (Emphasis supplied.)

of "irreparable injury", and in a majority opinion the Court of Appeals issued a temporary stay (R. 241) on that date so all parties could file supplemental statements.

In another majority decision, the Court of Appeals granted Respondents a stay pending appeal (R. 242) on June 12, 1951. On June 27, 1951 the Court of Appeals granted (R. 243) a motion of the Veterans of Foreign Wars to file a brief as *amicus curiae*, attached herewith as *Exhibit 7*.

Oral argument was heard on October 12, 1951 and the Court of Appeals issued a majority decision (R. 244) on January 24, 1952 wherein the opinion of the District Court was *reversed*. The Honorable Judge Clark *dissented*.

Specification of Errors

The Court of Appeals erred:

1. In reversing the judgment of the District Court in a majority opinion by holding that *all* ten alleged charges assigned for Petitioner's dismissal from Federal employment *did* meet the mandatory and limiting provisions of the Veterans' Preference Act requiring advance written notice "stating *any* and *all* reasons, specifically and in detail."

2. In holding, contrary to documentary evidence[3] that Petitioner's discharge was "premised upon the reasons severally", hit or miss, and contrary to statutory authority, held that "the *invalidity of one would be immaterial* to the result"; (R. 246) and by further holding that Petitioner's dismissal should not be set aside when one or more alleged reason(s) was vague and gossamer, in contravention to the

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[3] Respondents Civil Service Commissioners state at (J. App. 38):

"It was within the administrative discretion of the Office to withhold action on the individual incidents as they occurred and to consider their cumulative effect as it appears was done in the instant case."

positive definition of the words "any" and "all" used in said Act, claiming "the statute would be *absurd* if it had such a meaning" (R. 245).

3. In holding, after examining the Court Commissioner's detailed report, the admissions of Defendants-Respondents, documentary evidence and lengthy adversary argument, that the lower court "was in error and must be reversed", contrary to the provisions of Rule 52 (a), Federal Rules of Civil Procedure.

4. In holding that Petitioner had taken another position before the court by stating at R. 244 that "Campbell now asserts the invalidity of *all* the charges", when the record clearly shows (J. App. 2, 11, 12, 165, 166 and 232; and Appellee's brief *Exhibit 2*, pages 13-14) that Petitioner has constantly maintained the same precise position throughout all administrative and court proceedings, namely, that only six (6) of the alleged charges (1, 2, 3, 5, 6, and 7) are indefinite and contrary to the Act.

5. In holding that the case of *Bailey* v. *Richardson*, 182 F. (2d) 46 (1950), 71 S. Ct. 669 (1951) was controlling in the dismissal of Petitioner, a veteran Federal employee, when, in fact, said citation was a "loyalty" question pursuant to Executive Order 9835, 3 C. F. R. 132 (Supp. 1947) which *prohibits specificity and detail and imposes other great restrictions*, whereas the retention or dismissal of Petitioner, a veteran, is strictly controlled by the precise and limiting provisions of the Veterans' Preference Act which *mandates "any and all reasons, specifically and in detail"* and expressly gives a veteran great protection from executive caprice.

6. In holding, solely on acceptance of the interpretation and conclusions of Respondents as to the merits of the charges, that the alleged charges for Petitioner's dismissal "were amply established" (R. 249) when Petitioner *never* attempted to, nor *could*, defend himself from such abstruse

charges, the record clearly showing that he had raised only a legal question in all judicial proceedings, and had stated on page 3 in his brief (Exhibit 2) "The truth or falsity of the reasons * * * were not in issue"; and the Court further erred in holding that "He (Petitioner) was fully advised *from time to time*[6] as to the charges" (*after* dismissal), in an obvious breach of the provisions of the Veterans' Preference Act requiring "*advance* written notice" *before* dismissal.

7. In ignoring to rule on an important question of law brought before it by all parties on the issue of jurisdiction of the District Court Commissioner of Veterans' Cases pursuant to Local Civil Rule 29 (a) 2, wherein all veterans' cases are automatically referred for a report from said Commissioner, and the record clearly shows that the jurisdiction and authority of the Commissioner and the validity of said Rule were seriously and bitterly contested in repeated court proceedings as follows: Petitioner's Motion to Defer Hearing Until Report of Commissioner (J. App. 65), Respondent's Written Objections Thereto, District Court Order Referring Case to Commissioner (J. App. 65), Respondent's Motion to Stay Proceedings Before Commissioner (J. App. 66-68), District Court Order Staying Proceedings (J. App. 69), Respondent's Motion for Rehearing on Order Referring Case to Commissioner, District Court Opinion and Order on Respondent's Motion for Rehearing (J. App. 69-70), Respondent's Statement of Record Continuing Objections to Reference to the Commissioner (J. App. 70), Respondent's Objections to Report of Com-

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[6] Respondents Civil Service Commissioners *admit* in their own documentary evidence that such holding is contrary to law (J. App. 20) as follows:

> "The Appellant's (Petitioner's) attorney, Mr. Allshouse, submitted during the hearing in the Commission that any want of specificity and detail in the charges could *not* be made up in *subsequent* proceedings. *This submission is entirely correct;* * * *" (Emphasis supplied.)

missioner and Motion to Strike Said Report (J. App. 127-132), Respondent's Point 9 on Appeal (J. App. 237), and Petitioner's Question 3 in his Court of Appeals Brief (Exhibit 2).

Reasons for Granting the Writ

1. THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT HAS DECIDED A QUESTION OF GENERAL IMPORTANCE RELATING TO THE CONSTRUCTION AND APPLICATION OF A STATUTE OF THE UNITED STATES, WHICH QUESTION HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT.

This is a Petition for Writ of Certiorari to define the meaning and statutory effectiveness of the langage used by Congress in attempting to protect veterans in Federal employ from executive caprice or fiat, as in the instant case, when they enacted Section 14 of the Veterans' Preference Act of 1944. The opinion of the District Court and the majority opinion of the Court of Appeals are diametrically opposed as to the meaning and intent of the words "any, all, specifically and detail" which constitute the reason for the very existence of Section 14.

The requirements of Section 14 are "*advance* written notice, stating *any and all reasons, specifically and in detail,* for any such *proposed* action" in dismissing a veteran. The Court of Appeals has overruled the District Court, holding "that the statute would be absurd if it had such a meaning", and the statute now stands null and void with a definition which does violence to the ordinary meaning of the words and phrases used therein.

It is abundantly clear that the Congress carefully weighed its words in the construction of Federal statutes as evidenced by the use of "all" in some cases and its omission in others, fully confident that every word would be given its due force and appropriate meaning. *Williams* v. *United States,* 289 U. S. 53.

The procedural requirements of Section 14 are succinct and clear in their mandate, and the courts have previously defined the words used thusly:

> All: "A more comprehensive and all inclusive word than 'all' can hardly be found in the English language. There is a totality about it that few words possess. It is the whole, the sum of all the parts, the aggregate." *In re Central of Georgia Ry. Co.*, D. C. Ga., 58 Fed. Supp. 807, 813.
>
> Specific, Specifically: " 'Specific' means more definite or making definite; limited or precise; precisely formulated or restricted; tending to specify or make particular; the word is limited to a particular or definite or precise thing, and hence is the very opposite of 'general'." *State ex rel. State Ry. Comm.* v. *Ramsey*, 37 N. W. 2d 502, 509; 151 Neb. 333.
>
> " 'Specifically' means in a specific manner, explicitly, particularly, definitely." *Straton* v. *Hodgkins*, 155 S. E. 902; 109 W. Va. 536.
>
> Detail: "The word 'detail' means a minute portion; one of the small parts; a particular; an item. The word is used chiefly in the plural, as the details of a scheme or transaction." *State ex rel Van Densen* v. *Williams*, 39 So. 276, 277; 143 Ala. 501.

and settlement of the questions involved is of the greatest possible concern to the hundreds of thousands of veterans who are, and will be, in Federal employ, as evidenced by the brief as *amicus curiae* of the Veterans of Foreign Wars (Exhibit 1) filed in the court below which states on page 2:

> "The last word, as always, rests with the judiciary, and we and twenty million veterans greatly concerned await your decision, believing that the judgment of the Court (District) below should be affirmed."

and the Courts would invest a case of interest to them which has strong appeal to a court of equity for its remedies, once a legal right is fairly in controversy. *Porter* v. *Warner Co.*,

328 U. S. 395, 398; *Yakus* v. *United States*, 321 U. S. 414, 440; *Hecht Co.* v. *Bowles*, 321 U. S. 321, 331.

In the case at bar it is manifestly clear that Petitioner was not furnished all alleged reasons specifically and in detail in the charging letter (J. App. 7-9). Petitioner requested specificity and detail in order to defend himself (J. App. 11-13). Respondents refused (J. App. 14) by stating "* * * nothing would be accomplished by compliance with your request". For example, Charge 6 (J. App. 8) is a most serious charge[7] and, *if true*, is a *breach of the Criminal Code*, Sections 128 and 129, 18 U.S.C. 234 and 235, and such vagueness and abstruseness falls far short of the requirements of the Act. *Petitioner has never to this date been advised as to what "official papers" were allegedly removed.* Respondents did not furnish nor even show Petitioner a copy of the letter[8] referred to and Petitioner could not know the contents thereof. Petitioner has never to this date been advised as to who his alleged accomplice(s) was/were. Petitioner has never to date been advised as to what the "false or misleading statements" were.

The need for specificity is particularly necessary inasmuch as Charge 6 was 21 months old at the time of dismissal. Charges 1, 2, 3, 5, and 7 are also glaringly lacking in specificity and detail. The statutory procedural requirements relating to dismissal of Federal employees must be followed or the dismissals will be set aside by the courts. *Borak* v. *Biddle*, 141 F. 2d 278, cert. den. 65 S. Ct. 42; *Fisher* v.

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[7] *Charge 5 is also a criminal charge*, if true, notwithstanding that the truth or falsity are not in issue, Petitioner takes the unequivocal stand that if such serious charges are sufficient for dismissal after 14 years of trusted Federal service, Respondents are derelict in their duty for not referring same to a Federal Grand Jury for appropriate action.

[8] The letter in question (J. App. 218-222) was later presented to the Civil Service Commission and does *not* connect Petitioner with any of the vague innuendoes. In this respect, see the testimony of Herbert J. Jacobi in the report of the Court Commissioner J. App. page 84.

Haeberle, 80 F. Supp. 652; *Wittner* v. *United States,* 76 F. Supp. 110; *Stringer* v. *United States,* 117 C. Cls. 30, 90 F. Supp. 375.

The Court of Claims in applying the plain language of Section 14 of the Veterans' Preference Act in *Stringer* v. *United States,* 90 F. Supp. 375, concerning giving a veteran Federal employee a 29-day notice rather than the requisite 30-day notice, stated at page 379:

> "Nor can we accept defendant's contentions that plaintiff must show wherein he was harmed by the insufficiency of the notice period and that the doctrine of *de minimus non curat lex* applies here. We cannot construe a statute that plainly says 'at least thirty days' as meaning 'not quite thirty days'. The requirements of Section 14 are specific and mandatory. *Neither this Court, nor the Civil Service Commission, nor the Chief of Engineers can disregard them. Strict compliance is required. Lamb* v. *United States,* 90 F. Supp. 369; *Gadsen* v. *United States,* 78 F. Supp. 126; *Wittner* v. *United States,* 76 F. Supp. 110; *Elchibegoff* v. *United States,* 106 C. Cls. 541." (Emphasis supplied.)

The Court in the *Stringer* case continued at page 381:

> *"These were not little matters. They are of vast concern to the great array of veterans who are at least entitled to a good faith compliance with the rights granted * * * by Congress. We cannot set the pattern of trimming away those rights."* (Emphasis supplied.)

The majority opinion of the Court of Appeals reversing the District Court in the instant case negates the clear and succinct mandate of the Veterans' Preference Act.

2. THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT HAS RENDERED A DECISION IN CONFLICT WITH ITS OWN PREVIOUS DECISION IN THE CASE OF *DEAK* V. *PACE*, 185 F. 2d 997, ON THE SAME PRECISE QUESTION OF SPECIFICITY REGARDING ALLEGED CHARGES SUPPORTING DISMISSAL OF FEDERAL EMPLOYEES.

In *Deak* v. *Pace, supra,* decided December 7, 1950, appellant, a *non-veteran* Federal employee, was being removed under authority of Section 3, Act of December 17, 1942, 52 Stat. 1053, 5 U.S.C. 652 which provides in pertinent part:

> "Provided that within thirty days *after* such removal any such person shall * * * be *fully* informed of the reasons for such removal, * * *" (Emphasis supplied.)

The reasons given for *Deak's* dismissal were:

> "1. That you attended a meeting open only to Communist Party members, and
> 2. That you have attended meetings openly sponsored by the Communist Party or organization known to be affiliated with the Communist Party, and have evinced active and sympathetic affiliation with these organizations."

The Court, in granting *Deak* relief stated at page 999, 185 F. 2d:

> "It will be noted that the times, places and organizations were not specified * * * The controlling question is whether the Secretary, acting through his designated officer, fully informed appellants of the reasons for their removal. *The statute accords the right to information.* The duty to inform and the right to be informed are for the manifest purpose of affording the employee a fair opportunity to oppose the removal * * *. *The meaning of the statutory provision for information seems very clear* * * * *we see no reason why details as to times, places and organizations should not* have been furnished." (Emphasis supplied.)

It is to be noted that the controlling statute in the *Deak* case is very broad in construction, stating only that an employee must be "fully informed of the reasons", *after* dismissal, whereas the mandate of the Veterans' Preference Act in the case at bar is most precise in requiring "any and all reasons, specifically and in detail, for any such proposed action", *before* dismissal.

Notwithstanding Petitioner's Request for Admissions (J. App. 49-65), the Report of the District Court Commissioner (J. App. 100), the District Court's Findings of Fact and Conclusions of Law (J. App. 232-236), the unambiguous language of Section 14, and the Court of Appeals decision in the *Deak* case, the Court of Appeals in a majority opinion (R. 245) held that "the District Court's conclusion that the charges were not sufficiently specific was plainly erroneous".

Such holding in light of the record of the extensive detailed proceedings in the Trial Court is further contradictory to its own decisions and to universal judicial decisions holding that a factual finding by a Trial Court will not be disturbed on appeal unless it is clearly erroneous. *Smith* v. *Wilson*, 171 F. 2d 824; *Cherry-Burrell Corp.*, v. *Coe*, 143 F. 2d 372; *Sekulow* v. *11th & F Street Valet*, 162 F. 2d 19. See also: *Tennessee Coal, Iron and R. Co.*, v. *Muscoda Local No. 123, etc.*, 137 F. 2d 176, affirmed 64 S. Ct. 698.

3. THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA HAS SO FAR SANCTIONED SUCH A DEPARTURE FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEDURE AS TO CALL FOR AN EXERCISE OF THE SUPREME COURT'S POWER OF SUPERVISION.

The Court of Appeals substituted its conclusions for the facts as proven by Respondent's own documentary evidence, in that the Court held that Petitioner's dismissal was "premised upon the reasons severally", hit or miss, and

that "the invalidity of one would be immaterial to the result", stating at (R. 246):

> "In the case at bar the Government officials assert the sufficiency of each of the assigned reasons, and we find no ground to doubt the correctness of that position."

Respondents Civil Service Commissioners' *own documentary evidence* at J. App. 26 states:

> "It was within the administrative discretion of the (Government Printing) Office to withhold action on individual incidents as they occurred and to consider their *cumulative* effect as it appears was done in the instant case." (Emphasis supplied.)

The Court of Appeals cited *Bailey* v. *Richardson*, 182 F. 2(d) 46, 71 S. Ct. 669, (1951) as controlling "the whole subject of the rights of Civil Service employees upon proposals for discharge". Said citation is not in point because *Bailey* was dismissed under the provisions of Federal Employees Loyalty Program, Executive Order 9835, 3 C. F. R. 132 (Supp. 1947) which *prohibits* specificity and detail and imposes other great restrictions; whereas the Veterans' Preference Act, here in issue, *mandates* specificity and detail as concerns a veterans' proposed dismissal.

The Court of Appeals accepted the sole conclusions and argument of Respondents as to the merits of the alleged charges by holding that "the charges were amply established", when Petitioner has never attempted to question the truth or falsity, the sole issue being that of conformance of the charges to the Veterans' Preference Act and, in fact, such holding was in error from the record. See J. App. 115 where the Court Commissioner states:

> "• • • the ascertainment of the truth of the case is materially aided by the reading of the exhibit in question (J. App. 17-48). There the sustaining of the

ten charges by the Chief Law Officer is definitely based, I believe, on such inconsequential evidence that the whole evidence is nothing but the aggrandizement of the insignificant."

Finally, the Court of Appeals failed to rule on an important question of law brought before it by all parties on the issue of the jurisdiction of the District Court Commissioner of Veterans' Cases pursuant to Local Civil Rule 29 (a) 2. The issue was bitterly contested in the District Court as set forth as No. 7 of the "Specification of Erorrs" herewith.

Conclusion

WHEREFORE, Petitioner earnestly prays that a writ of certiorari be granted by the Supreme Court of the United States directed to the United States Court of Appeals for the District of Columbia Circuit wherein the decision of the lower court on the five questions presented herewith may be reversed, and a clear definition rendered in such a manner as to give full effect to the precise and succinct provisions of Section 14 of the Veterans' Preference Act in direct relation to the intent and purpose of the Congress in affording veteran Federal employees protection from executive caprice or fiat in their career employment.

Most respectfully submitted,

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Boise, Idaho,
Pro se.

Dated June 20th, 1952.

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In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 146

ORTON T. CAMPBELL, *Petitioner*

v.

JOHN J. DEVINY, ET AL.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The order of the District Court is not reported (R. 234-235). The opinion of the Court of Appeals for the District of Columbia Circuit (R. 244-249) is reported at 194 F. 2d 876.

JURISDICTION

The judgment of the Court of Appeals was entered on January 24, 1952 (R. 250). On April 22, 1952, the Chief Justice extended the time within which to file a petition for certiorari to June 21,

1952 (R. 252). The petition for certiorari was filed on June 20, 1952. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the court below correctly held that petitioner's discharge from the federal service followed the prescribed statutory procedure.

STATUTE INVOLVED

1. Section 14 of the Veterans' Preference Act of 1944 (58 Stat. 387, as amended, 61 Stat. 723, 5 U.S.C., Supp. IV, 863) provides the procedure to be followed in separating veterans [1] from the civil service:

> No permanent or indefinite preference eligible, who has completed a probationary or trial period employed in the civil service, or in any establishment, agency, bureau, administration, project, or department, hereinbefore referred to shall be discharged, suspended for more than thirty days, furloughed without pay, reduced in rank or compensation, or debarred for future appointment except for such cause as will promote the efficiency of the service and for reasons given in writing, and the person whose discharge, suspension for more

[1] Petitioner is a veteran and it has been assumed that he was therefore a "preference eligible employee within the meaning of Section 14 of the Veterans' Preference Act of 1944" (R. 20). As we point out below, however, there is serious doubt as to petitioner's eligibility for the benefits of the Act. See *infra*, p. .

than thirty days, furlough without pay, or reduction in rank or compensation is sought shall have at least thirty days' advance written notice (except where there is reasonable cause to believe the employee to be guilty of a crime for which a sentence of imprisonment can be imposed), stating any and all reasons, specifically and in detail, for any such proposed action; such preference eligible shall be allowed a reasonable time for answering the same personally and in writing, and for furnishing affidavits in support of such answer, and shall have the right to appeal to the Civil Service Commission from an adverse decision of the administrative officer so acting, such appeal to be made in writing within a reasonable length of time after the date of receipt of notice of such adverse decision: *Provided,* That such preference eligible shall have the right to make a personal appearance, or an appearance through a designated representative, in accordance with such reasonable rules and regulations as may be issued by the Civil Service Commission; after investigation and consideration of the evidence submitted, the Civil Service Commission shall submit its findings and recommendations to the proper administrative officer and shall send copies of the same to the appellant or to his designated representative, and it shall be mandatory for such administrative officer to take such cor-

rective action as the Commission finally recommends. * * *

2. Section 20 of the Act (58 Stat. 391, 5 U.S.C. 869) excludes the following positions from its coverage:

> Nothing contained in this Act is intended to apply to any position in or under the legislative or judicial branch of the Government or to any position or appointment which by the Congress is required to be confirmed by, or made with, the advice and consent of the United States Senate: *Provided, however,* That the provisions of this Act shall apply to appointments under Public Law Numbered 720, Seventy-fifth Congress, third session, approved June 25, 1938.

STATEMENT

This case arises out of petitioner's claim for reinstatement to the Government Printing Office job from which he was discharged for cause.

On April 29, 1949, the Public Printer notified petitioner that his removal from the rolls of the Government Printing Office was proposed because of "misconduct extending over a 2½-year period" (R. 7). The notice set forth ten charges of misconduct, including petitioner's defiance of specific orders and his false accusations of criminal conspiracy, perjury, fraud and corruption against his superiors (R. 7-8). In accordance with Section 14

of the Veterans' Preference Act, *supra*, p. 2, petitioner was advised of his right to answer the charges "personally and in writing" and of his right to furnish supporting affidavits (R. 9).

On receiving petitioner's reply to the charges, the Public Printer convened a Board of four officials of the Printing Office to consider the case and submit recommendations (R. 18). On May 23, 1949, the Board unanimously recommended that petitioner be dismissed (R. 18). The Public Printer, after reviewing the charges, petitioner's reply, the transcript of proceedings before the Board, and the Board's recommendation, determined that the charges were sustained (R. 18). Petitioner's services were accordingly terminated on June 3, 1949, and he was informed of his right to appeal to the Civil Service Commission under Section 14 of the Veterans' Preference Act, *supra*, p. 3. (R. 14-15).

Petitioner appealed and the case was fully investigated by the Commission (R. 15). Photostats and copies were obtained of pertinent documents in the Printing Office files (R. 18). In addition, affidavits were obtained from petitioner and more than twenty Printing Office officials and employees (R. 18-19). On completion of this investigation, the Commission held a hearing which was attended by petitioner and his counsel (R. 19). Petitioner testified in his own behalf and also offered the testimony of another witness (R. 19). The Printing

Office was represented at the hearing by its Chief Clerk (R. 19). After the conclusion of the hearing, a summary of the relevant facts developed during the hearing was prepared and submitted to the parties for their review and signature (R. 19). Petitioner and his counsel signed and returned the summary, noting minor typographical errors (R. 19). The Chief Clerk signed and returned his copy without notation (R. 19).

On the basis of all the foregoing information,[2] the Chief Law Officer of the Commission found that all ten of the charges were sustained, that petitioner's removal was for such cause as would promote the efficiency of the service, was not procedurally defective and did not violate any of his rights as a veteran (R. 20-21, 47).

Petitioner was advised of the decision and notified of his right to a further appeal (R. 16). He filed an appeal with the Commission's Board of Appeals and Review. The Board, after granting petitioner a hearing and considering the entire record, affirmed the decision of the Chief Law Officer sustaining the Printing Office's dismissal of petitioner (R. 16, 48). Thereafter, he took a still further appeal to Civil Service Commissioners, who, after careful consideration of the entire

[2] All of this material was incorporated into the Commission's appeal file which at all times has been available for inspection by the parties (R. 19).

file in his case, affirmed the decisions reached below (R. 49).

Petitioner then instituted this suit against respondents (the Public Printer and the Civil Service Commissioners) for restoration to the Printing Office job he held on June 3, 1949 (R. 1-4). The gravamen of his "Complaint for Enforcement of Veterans' Rights," filed March 30, 1950, was that his discharge violated the procedural requirements of Section 14 of the Veterans' Preference Act because the charges were not specific and in detail (R. 1-4).

Respondents moved for summary judgment, submitting supporting affidavits (R. 5). However, the District Court on July 31, 1950, granted petitioner's motion to refer the case to the Commissioner of Veterans' Cases and to defer consideration of respondents' motion until the Commissioner filed a report (R. 65-66). Petitioner also filed a cross-motion for summary judgment at that time (R. 66).

The Commmissioner filed a report recommending that both motions for summary judgment be denied (R. 126-127). After trial of the case, the District Court, finding that the procedure used in discharging petitioner did not comply with Section 14, ordered petitioner restored to duty in the Printing Office as of June 3, 1949, the date of his discharge (R. 232-234).

On appeal, the Court of Appeals reversed, hold-

ing that the statute had not been violated (R. 244-249). Judge Clark dissented. (R. 249).

ARGUMENT

Petitioner's main contention is that the court below erred in finding that he was informed of the reasons for his discharge "specifically and in detail", as required by Section 14 of the Veterans' Preferment Act, *supra,* p. 3. We submit that the finding was fully justified by the facts of this case. Moreover, even if incorrect, such a finding presents no novel issue of law calling for authoritative determination by this Court. In addition, it is at least doubtful whether petitioner, as an employee of the Government Printing Office, an agency generally regarded as within the legislative branch of the Government, is entitled to any of the benefits of the Veterans' Preference Act, which in terms is limited to positions in the executive branch.

1. Under Section 14, the notice of proposed discharge must set forth "any and all reasons [for the discharge] specifically and in detail." *Supra,* p. 3. Of the 10 charges set forth in the Public Printer's April 29, 1949, letter, petitioner concedes that four were sufficiently specific to meet the statutory test. (Pet. 14). A fifth charge, as pointed out by the court below, was also conceded to be sufficiently specific by petitioner's counsel, in his presence, at the hearing before the Civil Service Commissioners. (R. 244).

Examination of the remaining charges—1, 2, 3, 6 and 7—show that they, too, were sufficiently definite to apprise petitioner of the particular offenses charged so as to enable him to submit his defense. Charge 1, for example, alleged that petitioner, on April 12, 1949, distributed to other Printing Office employees copies of a certain printed brief, containing marginal notes which were written by him and which created discontent among the employees and disrespect for the Public Printer and other officials. There can be no doubt that this description—the reference to the date of the distribution of the material, the nature of the material distributed, the reference to the fact that it was petitioner's own handwriting notations which were offensive—informed petitioner with sufficient precision of the exact offense charged. Similarly, charges 2, 3, 6 and 7, as stated by the court below and found by the Civil Service Commission, "were sufficiently specific" (R. 245).

Petitioner also urges here, as he did below, that the statutory test of specificity applies to "any and all reasons" for the discharge and that therefore all of the ten charges here involved must meet that test. (Pet. 13-14). But this contention, even if sound, is immaterial here since the court below found that "all" ten charges "did meet that test" (R. 245).

The two cases relied on by petitioner in arguing that the charges here involved lacked definiteness

also do not support his view. The first case, *Stringer* v. *United States,* 117 C. Cls. 30, has no bearing here. It simply held that the statute guarantees to the employee a 30-day notice of any proposed discharge and that 29 days is therefore inadequate. In the instant case, petitioner received more than 30 days notice. He was notified of the proposed discharge on April 29, 1949 and his separation did not take effect until June 3, 1949. See *supra,* pp. 4-5.

Nor does the other case, *Deak* v. *Pace,* 185 F. 2d 997 (C.A.D.C.), aid petitioner. There, the court below, dealing with a question of specificity under Section 3 of the Act of December 17, 1942 (56 Stat. 1053), emphasized that "what may satisfy the statutory requirement for full information in the circumstances of one case may be wholly irrelevant to the circumstances of other cases." 185 F. 2d 997, 998. In the *Deak* case, the employees were charged with attending meetings of the Communist Party or affiliated organizations, without any specification as to time, place, or name of organization. In the instant case, on the other hand, petitioner was made fully aware of what was charged, each charge carrying a specific reference fully describing the date, place and nature of the incidents involved. These important distinctions in the factual backgrounds of both cases account for the different results reached and, at the same time, show that the cases are not inconsistent or in conflict, as petitioner asserts.

2. Petitioner's case rests on the assumption that he is entitled to the benefits of the Veterans' Preference Act of 1944, including the right to have his discharge from federal employ conform to the requirements of Section 14 of that Act. Although the point was not raised in the courts below by respondents, it should be noted that the express language of the Act denies its benefits to those employed "in or under the legislative or judicial branch" of the Government. Section 20, *supra*, p. 4. The quoted language was inserted in the Act by Congress to "make clear the act is intended to apply only to positions in or under the executive branch of the Government." S. Rep. 907, 78th Cong., 2d Sess. on H.R. 4115, p. 4. Regulations of the Civil Service Commission under the Act reiterate that Act's nonapplicability "to employees under the legislative or judicial branch of the Government." 5 C.F.R. 22.1(1).[3] The Government Printing Office is ordinarily regarded as within the legislative branch. See Act "Making Appropriations for the Legislative Branch," including the Government Printing Office, 65 Stat. 387, 401; United States Government Organization Manual (1951-1952), p. 37. It is at least very doubtful, therefore, whether petitioner is entitled to claim any benefits under the Act.

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[3] The Civil Service Commission and the Printing Office, however, have assumed that petitioner was entitled to the benefits of the Act. (R. 19-20). See fn. 1, *supra*, p. 2.

CONCLUSION

The decision of the court below reversing the District Court is clearly correct. There is no conflict of decisions and further review is not warranted. It is respectfully submitted that the petition for a writ of certiorari should be denied.

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JULY, 1952

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